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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

ROXANA V.,

Plaintiff and Appellant,

v.

RANDY S.,

Defendant and Respondent.

B293013

(Los Angeles County
Super. Ct. No.
18STRO04989)

APPEAL from an order of the Superior Court of Los Angeles County. Laura Hymowitz, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Affirmed.

Law Office of Noelle M. Halaby, Noelle M. Halaby and Maria D. Houser for Plaintiff and Appellant.

Law Office of Katherine H. Donahue, Katherine H. Donahue; Jeff Lewis Law, Jeffrey Lewis and Sean Rotstan for Defendant and Respondent.

Plaintiff and appellant Roxana V. (Roxana) appeals from the denial of her request for a domestic violence restraining order (DVRO) against her husband, defendant and respondent Randy S. (Randy), under the Domestic Violence Prevention Act (DVPA) (Fam. Code, § 6200 et seq.).¹ Roxana argues that (1) the trial court abused its discretion by failing to issue a DVRO; and (2) the court was biased against her. We reject both contentions and affirm.

FACTUAL AND PROCEDURAL BACKGROUND

I. Roxana's DVRO Request

On July 13, 2018, Roxana filed a request for a DVRO, seeking protection from Randy for herself and their 16-year-old son, D.S. (minor son), on the ground that she was afraid that Randy would hurt them.

In a declaration attached to the request, Roxana stated that she had been arrested for domestic abuse against Randy in 2001 and that Randy had been arrested for domestic abuse against her in 2008. Roxana described how, on July 4, 2018, Randy accused her of infidelity and “became verbally abusive” to her at a family party. Randy told her that their “phones were tapped and ‘all that s***-talking you did at the club, I’m going to make sure you pay for it.’” Fearing for her safety, Roxana left her house with minor son the following day. On July 8, 2018, Roxana told Randy that she wanted to end their relationship; thereafter, Randy “continued to threaten to take [Roxana] off of the title to [their] house.” Randy told Roxana that he would “throw out all of

¹ All further statutory references are to the Family Code unless otherwise indicated.

[her] belongings, change the locks on the house, and take out a loan in [her] name because he wanted to ruin [her] credit.”

On July 12, 2018, Randy came to the gym and stared at Roxana while she was exercising. He eventually approached her and asked where his cell phone was. When Roxana told him that she did not know, Randy “became aggressive” and accused Roxana of lying. Randy found his phone in his car. The owner of the gym informed Randy that he was no longer welcome because of his disruptive behavior.

II. The Temporary Restraining Order

A temporary restraining order was issued on July 13, 2018, to be in effect until a hearing set for August 3, 2018. Randy was ordered to have no contact with Roxana or minor son and to stay at least 100 yards away from them. Randy was also ordered to move out of the family home immediately.

III. Randy’s Response

Randy responded to Roxana’s DVRO request on July 27, 2018. He disagreed with Roxana’s requested orders, but stated that he would agree to reciprocal personal conduct and stay away orders that would restrain both parties equally.

Randy denied ever hitting Roxana, but claimed that she had “hit, punched and scratched [him] on many occasions.” He also denied threatening “to change the locks, throw out [Roxana’s] stuff[,] . . . ruin her credit[,]” or “take her off the title to the house.”

Regarding previous arrests for domestic violence, Randy denied that any incident occurred in 2008. In 2003 or 2004, Roxana was arrested for slapping and scratching Randy and jailed for three days before the charges were dropped. In 2002 or 2003, the police detained Randy for a few hours after he came

home late, was locked out, pounded on the door, and fell asleep on the porch. Roxana had called the police, stating that “she was scared that [Randy] was aggressive and trying to get in.”

Randy alleged that in May 2018 Roxana punched him in the face several times while drunk. Randy suffered a black eye, which lasted approximately 12 days. Roxana slapped Randy in June 2018, because he “did not buy her the specific purse she wanted for [M]other’s [D]ay.” Randy stated that Roxana’s account of the incident on July 4, 2018, was “completely fabricated.” Regarding the incident at the gym, Randy admitted that, before he found his phone in his car, he thought that Roxana had taken it and threatened to call the police. He later apologized to Roxana and the gym owner.

IV. The August 3, 2018 Hearing

The hearing on Roxana’s DVRO request was held on August 3, 2018. The parties stipulated to having Commissioner Laura Hymowitz hear the matter.

A. Roxana’s testimony

Roxana testified that she and Randy separated on July 5, 2018. The day before, while at Randy’s father’s house for a Fourth of July party, Randy asked Roxana if they could have sex when they got home. When Roxana told him no, Randy “became aggressive.” He called Roxana “a bitch” and accused her of infidelity in the presence of minor son.

On July 13, 2018, the day Roxana filed her DVRO request, Randy placed a tracking device in her car. The next day, Roxana went with minor son to a drugstore. Minor son started screaming that Randy was in the alley. Looking “very angry and agitated[,]” Randy came toward Roxana with “tight fists[.]” Roxana “panicked[,]” “jumped in the car[,]” and started to drive toward

the gym with minor son in the car. Randy followed and tried to “cut . . . off” her car several times.

B. *Video evidence*

A video recorded by Roxana was played. In the video, Randy stands outside of Roxana’s car, holding a ring. Randy comes to the passenger side door and repeatedly tells Roxana to “open the f***ing window.” Roxana refuses, and Randy knocks on the window. Minor son tells Roxana that Randy is going to break the window and to roll it down. She opens the window, and Randy tries to give her the ring.

As Randy opens the car door, minor son yells, “Dad! Stop dude!” Roxana tells Randy to leave her alone and “get out of here.” She tells minor son that Randy is “not letting [her] go.” Randy and Roxana yell at each other, trading various accusations. Randy walks to the other side of the car. Roxana tells him, “You don’t stop. You’re not stopping,” to which he responds, “Neither are you!” Minor son screams, “Dad stop!”

C. *Randy’s testimony*

Randy admitted that he placed a tracking device in Roxana’s car in June 2018.

Randy testified that Roxana’s phone rang while they were at the Fourth of July party. As Randy walked past, Roxana said, “What? What? It’s my sister.” Randy asked, “why are you acting this way? Why do you need to be so aggressive with me, you know, talking to me in that way.” Randy told Roxana that he was not trying to argue with her. Roxana responded, “I already told you, I don’t love you. I don’t care about you.” Randy denied becoming aggressive or calling Roxana “a bitch”; rather, he told Roxana that he loved her and did not want a divorce.

On July 14, 2018, Randy saw Roxana while he was driving. He pulled in to where she was parked because he had not seen minor son. Roxana quickly jumped into her car “and then went out onto oncoming traffic.”

Randy testified that Roxana repeatedly removed minor son from the family home, which Randy did not like. Minor son was “attached to [Roxana] and he listen[ed] a lot to her[.]”

Regarding the videotaped incident, Randy testified that he wanted Roxana to open the car window so that he could give her back a wedding ring. He opened the car door and, when Roxana refused to take the ring, he “put it down on the floor on the mat in between the rear seat and the front seat.” He then texted minor son to let him know where the ring was before it was lost.

D. The gym owner’s testimony

The owner of the gym that both Roxana and Randy attended for approximately six years testified that Randy “would just create problems at the gym” by “getting loud” and “disruptive[.]” At some point, the gym owner told Randy not to come back. Roxana and Randy were arguing outside, and the gym owner thought it sounded like Randy was accusing him of having an affair with Roxana. The gym owner was upset by Randy’s accusation and told him, “just please leave all this out of the gym. Whatever you guys want to do at home, do at home; not in the gym, not in the parking lot. Leave it out of the gym, please.”

The gym owner denied ever seeing Randy hit Roxana. However, he saw Randy “grab[] her by the wrist and walk[] out of the gym.” When Randy accused Roxana of stealing his phone, “he got very frantic and loud with it.” The gym owner admitted that he also raised his voice during the incident but that Roxana did

not. When Randy went outside to try to locate his phone in the car, Roxana stopped in the middle of a class and “was shaking and afraid.”

E. *Minor son’s testimony*

The trial court asked minor son about the videotaped incident. Minor son testified that he “decided to leave with [Roxana] and [Randy] started panicking and freaking out, and he was trying to hold [them] against [their] will.” Randy “started to jump on the car[,]” which scared minor son. Randy said “to get out of the car and stay home. That he was going to leave.” However, “each time he would say that, he would never leave and he wouldn’t leave [them] alone.”

Randy told Roxana to “roll down the window” and “started socking the window.” Roxana rolled down the window when minor son told her to. Randy asked, “Why aren’t you going to stay? Why don’t you want to be with me?” Roxana responded, “I don’t want to be with you anymore. I don’t feel comfortable. We don’t feel comfortable around you.” Randy “said, ‘Fine. Then leave.’ [¶] He threw the ring back into the car.” Randy “stood on the street and watched [Roxana and minor son] drive away.” Minor son was scared.

Minor son denied ever seeing Randy or Roxana hit the other. He testified that he had seen Randy push, grab, and restrain Roxana. On the night of the videotaped incident, Roxana “wanted to sleep on the couch and be left alone[,]” but Randy tried to pick her up. Minor son saw Randy “grab her wrist and her leg.” Randy “tried carrying her to the room and said, ‘You are going to lay down with me.’” When minor son tried to pull him away, Randy said, “You better stand back or else you are going to get involved right now.”

Several nights earlier, minor son had “woke[n] up because [he] heard a struggle and then got up because [he] heard both of them yelling[.]” Randy “was on top of [Roxana] trying to pull her shorts off.” Roxana tried to push Randy away, but minor son “had to step in and get him off of her.” Randy had been drinking, and minor son thought he “was attempting to sexually assault” Roxana.

Minor son stated that Randy had previously pushed a door closed on him. Minor son had seen Roxana raise her voice with Randy and agreed that “both of them can get into it.”

Regarding the incident on July 4, 2018, minor son testified that Randy, who was drunk, had a “crazy look in his face like he was going to beat . . . somebody” and threatened Roxana in front of the family.

When minor son was sitting in front of a convenience store with Roxana, Randy sent minor son a text message asking for a Monster energy drink. Roxana and minor son “panicked because [they] didn’t know where he was.” Minor son later spoke with Randy on the phone and asked him, “Why are you calling me and telling me to buy you a Monster? You are being weird.” Randy stated, “Well, . . . I just know where you are at. And I have people that know where you are at.” Randy told minor son, “Well, I’m just calling to tell you that I love you, and good night.”

As to the incident that began at the drugstore parking lot, minor son testified that Randy appeared, got out of his car, and stared at Roxana and minor son “with an angry face.” Roxana tried to drive away from Randy, who “swerved into the middle lane [H]e kept swerving and trying to cut [them] off and slow [them] down or stop in front of [their] car.”

F. The trial court's denial of the DVRO request

After Roxana and Randy testified but before the gym owner and minor son, the trial court commented that it did not consider either Roxana or Randy to be an “angel[.]” Rather, the court saw that “they both have tempers” and “both get at each other[.]” The court did not “see reasons for a restraining order.”

At the conclusion of the hearing, the trial court stated that although the video showed that Randy was “knocking on the window” and was “obviously angry,” he did not “come in and assault [Roxana] in the car.” Randy walked around the car and returned the ring to Roxana. Roxana was “saying as much stuff as [Randy]” and was “actually louder . . . and . . . baiting him” The court found the messages entered into evidence from Randy neither threatening nor intimidating. Although Randy “clearly . . . misbehaved at the gym” and “grabbed [Roxana’s] hand and went out of the class[.]” the court did not “see that as abuse.”

The trial court stated that Randy “may have acted badly by” Roxana at the Fourth of July party when Roxana “was basically breaking up with him and saying this is over.” The court noted that, although Roxana’s DVRO petition did not mention physical violence, there was “a long history of abuse” between Randy and Roxana in which they were “mutual parties” and “physical with each other.”

Regarding minor son’s testimony that he saw Randy on top of Roxana in their room, the trial court did not know what had actually occurred. The court referred to minor son as “a kid who has been seeing all sorts of anger back and forth” and noted Randy’s testimony that minor son was “very close to his mother.” The court thought that Randy was probably louder than Roxana

and probably had a worse temper. Although Randy had attempted “to get back with [Roxana] and . . . followed her[,]” the court concluded that Randy had “not done anything violent to her and he [was] not making any threats to her.”

The trial court denied the DVRO request without prejudice, telling Roxana, “if there [are] any further problems where he is aggressive with you, pushes you, hurts you[], [or] threatens you, you can come back to court.”

The trial court’s minute order stated: “Having found no basis for the issuance of a permanent restraining order, the Court hereby denies [Roxana’s] request without prejudice. Any and all restraining orders are hereby dissolved.”

This timely appeal ensued.

DISCUSSION

I. The Trial Court Did Not Abuse Its Discretion.

Roxana argues that the trial court abused its discretion by denying her DVRO request despite making a finding of abuse and being presented with “uncontroverted evidence of stalking behavior and sexual assault.” We disagree.

A. Relevant law and standard of review

The purpose of the DVPA “is to prevent acts of domestic violence, abuse, and sexual abuse and to provide for a separation of the persons involved in the domestic violence for a period sufficient to enable these persons to seek a resolution of the causes of the violence.” (§ 6220.) To effectuate this purpose, a trial court may issue a DVRO upon a showing “to the satisfaction of the court, [of] reasonable proof of a past act or acts of abuse.” (§ 6300, subd. (a).)

“Abuse is not limited to the actual infliction of physical injury or assault” (§ 6203, subd. (b)) and includes causing or

attempting to cause bodily injury (§ 6203, subd. (a)(1)), sexual assault (§ 6203, subd. (a)(2)), “plac[ing] a person in reasonable apprehension of imminent serious bodily injury” (§ 6203, subd. (a)(3)), and behavior such as “stalking, threatening, . . . harassing, . . . or disturbing the peace of the other party” (§ 6320, subd. (a); see also § 6203, subd. (a)(4)).

We review the denial of a DVRO request for abuse of discretion. (*In re Marriage of Davila & Mejia* (2018) 29 Cal.App.5th 220, 226.) We will not disturb the trial court’s decision unless, “‘. . . considering all the relevant circumstances, the court . . . ‘exceeded the bounds of reason’ or it can ‘fairly be said’ that no judge would reasonably make the same order under the same circumstances.’” [Citation.]” (*Herriott v. Herriott* (2019) 33 Cal.App.5th 212, 223 (*Herriott*)). “We accept as true all evidence tending to establish the correctness of the trial court’s findings, resolving every conflict in the evidence in favor of the judgment. [Citation.]” (*In re Marriage of Fregoso and Hernandez* (2016) 5 Cal.App.5th 698, 702.)

B. Analysis

Roxana has not demonstrated that the trial court’s ruling was outside “the bounds of reason” and therefore an abuse of its discretion. (*Eneaji v. Ubboe* (2014) 229 Cal.App.4th 1457, 1463.) Under the circumstances present here, the court could have reasonably determined that a DVRO was not required “to prevent acts of domestic violence, abuse, and sexual abuse[.]” (§ 6220.) Accordingly, we have “no authority to substitute [our] decision for that of the trial court. [Citations.]” (*Shamblin v. Brattain* (1988) 44 Cal.3d 474, 479.)

Randy denied nearly all of Roxana’s allegations, including that he had ever hit her. The video and text messages were

subject to various interpretations and did not indicate an indisputable need for a restraining order. The trial court questioned minor son's account and the extent of Roxana's influence over him. In essence, Roxana "disputes the trial court's view of the evidence, but we are required to defer to the court's credibility determinations and make all reasonable inferences in support of the court's findings. [Citation.]" (*In re Marriage of Martindale & Ochoa* (2018) 30 Cal.App.5th 54, 61.)

We reject Roxana's contention that the trial court "failed to apply the appropriate legal standard for abuse" by focusing its analysis on physical abuse. Nothing in the record demonstrates that the court was unaware of the legal standard for issuing a DVRO. The court explicitly, and correctly, agreed with Roxana's counsel that "physical violence is not necessarily required for abuse" within the meaning of the DVPA. (See § 6203, subd. (b).)

And, even if Roxana made a "facially adequate" showing of abuse to justify the issuance of a DVRO, as she also contends, it does not necessarily follow that the trial court abused its discretion by denying the request. The issuance of a DVRO is discretionary (§ 6300, subd. (a); *Herriott, supra*, 33 Cal.App.5th at p. 223), and Roxana cites no authority for the proposition that a court is required to issue a DVRO if it makes any finding of abuse.

Roxana's citations to *In re Marriage of Nadkarni* (2009) 173 Cal.App.4th 1483 (*Nadkarni*) and *Gou v. Xiao* (2014) 228 Cal.App.4th 812 (*Gou*) are not helpful to her position. In *Nadkarni*, allegations of conduct causing emotional distress were "facially sufficient for a showing of abuse under the DVPA and require[d] a hearing on the merits" of an application for a restraining order. (*Nadkarni, supra*, 173 Cal.App.4th at

pp. 1498–1499.) In *Gou*, “the trial court abused its discretion in denying the DVRO request without a hearing and determination on the merits” where the DVRO application alleged behavior that created a “reasonable apprehension of imminent serious bodily injury” and “caus[ed] the destruction of . . . mental or emotional calm.” (*Gou, supra*, 228 Cal.App.4th at p. 818.) *Nadkarni* and *Gou* analyzed what constituted a facially sufficient showing of abuse under the DVPA where requests for restraining orders were summarily denied.² These cases are inapplicable here, where Roxana received a hearing and was permitted to testify and call witnesses. The facial sufficiency of her request is irrelevant.

Because we cannot say ““ . . . that no judge would reasonably make the same order under the same circumstances[]”” (*Herriott, supra*, 33 Cal.App.5th at p. 223), we find no abuse of the trial court’s discretion.

II. Roxana Has Not Demonstrated That the Trial Court Was Biased.

By failing to raise it below, Roxana forfeited her claim that she was deprived of a fair hearing because the trial court was biased against her. (See *People v. Buenrostro* (2018) 6 Cal.5th 367, 405 [judicial bias claim not raised in trial court forfeited on appeal]; *People v. Pearson* (2013) 56 Cal.4th 393, 447 [same].) But even if the argument was not forfeited, we would still reject it on the merits.

² The *Gou* court “express[ed] no opinion on how the trial court should exercise its discretionary authority in conducting the hearing or in determining whether or not to issue a DVRO” (*Gou, supra*, 228 Cal.App.4th at p. 818.)

Roxana points to various comments by the trial court that she contends demonstrate bias or the lack of “understanding of the victim mentality and the dynamics of an abusive relationship.” For example, during Randy’s testimony, the court attempted to clarify when certain statements were made and asked Randy, “So [Roxana] is still spewing about what happened before that?” And, Roxana contends that the court “allowed Randy’s counsel to speak disrespectfully towards Roxana and her counsel.” She also claims that the court had “ex parte communications with Randy’s counsel.” While Roxana’s counsel briefly left the courtroom to retrieve a witness, the court told Randy’s counsel that she could not “testify when she is gone” and also stated, “I really don’t want to put the son as a witness in.”

As the reviewing court, “[o]ur role . . . is not to determine whether the trial judge’s conduct left something to be desired, or even whether some comments would have been better left unsaid. Rather, we must determine whether the judge’s behavior was so prejudicial that it denied [the party] a fair, as opposed to a perfect, trial.’ [Citation.]” (*People v. Snow* (2003) 30 Cal.4th 43, 78.) This principle applies to our review of a DVRO hearing.

Here, viewing the record as a whole, we do not find that the trial court was biased or deprived Roxana of a fair hearing. The comments cited by Roxana do not demonstrate any overt bias. It is unclear from the transcript to whom the court was speaking when it expressed its reluctance to have minor son testify. But, assuming that Roxana is correct and the court had an ex parte communication with Randy’s counsel, Roxana has not demonstrated that she was prejudiced in any way. The trial court had previously expressed its reservations about Roxana calling minor son as a witness and, despite this, minor son was

permitted to and did testify. Any error was harmless. (See *People v. Sánchez* (2016) 63 Cal.4th 411, 480 [in the criminal context, ex parte communication subject to harmless error analysis].)

We therefore reject Roxana's claim of judicial bias.

DISPOSITION

The order denying the DVRO request is affirmed. Randy is entitled to his costs on appeal.

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_____, J.
ASHMANN-GERST

We concur:

_____, P. J.
LUI

_____, J.
HOFFSTADT